

April 4, 2005

JOHN PANESKO  
222 E SPRING ST  
CHEHALIS WA 98532

Subject: Complaint filed against Dr. Greg Kirsch, Superintendent, Chehalis School District – PDC Case No. 04-451

Dear Mr. Panesko:

The Public Disclosure Commission (PDC) staff has completed its investigation of your complaint received October 28, 2003, alleging that Dr. Greg Kirsch, Superintendent, Chehalis School District, violated RCW 42.17.130 by expending public funds to produce and distribute a newsletter that featured and supported incumbent school board member Larry Gueck, a candidate up for re-election in 2003.

The statute implicated by the complaint filed in this matter is RCW 42.17.130, which prohibits use of public facilities to support or oppose campaigns. On July 29, 2002, the King County Superior Court entered a permanent injunction that affected PDC activities to enforce and educate the public about RCW 42.17.130. The case was *Washington Education Association v. PDC*. The PDC had produced guidelines discussing RCW 42.17.130. The WEA filed a lawsuit challenging the guidelines and raising constitutional claims concerning RCW 42.17.130. Despite the PDC's objections, the superior court ordered the PDC to remove the guidelines from its website, to not further disseminate the guidelines as written or disseminate similar information about RCW 42.17.130, and to not initiate or engage in enforcement activities based upon the guidelines as written or similar information. The PDC appealed to the State Supreme Court. On December 11, 2003, the State Supreme Court reversed the superior court. The Supreme Court issued a mandate to the superior court on January 5, 2004, which formally concluded the case. The PDC resumed its usual activities regarding RCW 42.17.130. One of those activities was to process complaints that had been pending or were received at the time the permanent injunction was in effect. Investigation of your complaint was restarted April 28, 2004 following the State Supreme Court's reversal of the Permanent Injunction.

PDC staff reviewed your complaint in light of the following statute:

**RCW 42.17.130** prohibits elected officials, their employees, and persons appointed to or employed by a public office or agency from using or authorizing the use of public facilities, directly or indirectly, for the purpose of assisting a candidate's campaign or for the promotion of, or opposition to, any ballot proposition.

You alleged that Dr. Greg Kirsch, Superintendent, Chehalis School District, violated RCW 42.17.130 by expending public funds to produce and distribute a newsletter that featured and supported incumbent school board member Larry Gueck, the only candidate facing a challenger in the November 2003 election, by displaying his picture in five photographs. We found:

- David (Larry Gueck) filed a C-1 for election to his appointed position of board director for the Chehalis School District, position number 3, on August 5, 2003. Michael Lee Lewis was also a candidate for the same office and registered his candidacy on July 29, 2003. Mr. Gueck prevailed over Mr. Lewis at the general election by receiving 1,148, or 51.5 percent of the vote. Mr. Gueck was the only incumbent Chehalis School District candidate that faced opposition in the 2003 election, although Christine Langford, Dennis Dawes, and Joseph Clark were also candidates in 2003. Glen Dickason was not a candidate in 2003.
- On the front page of the Fall 2003 edition of the Learning Network newsletter in question was an article written by Dr. Kirsch, entitled "*2003-2004 ... the start of another successful school year.*" The article described facility updates, staff training and a recent presentation to the school board; however, it does not mention incumbent board member Larry Gueck, or any other board member by name, or reference the upcoming election. Included on the page were four photos, three of which depicted various staff and board members, including Mr. Gueck, during a presentation and two inspections of district facilities. Board members Glen Dickason appeared in two of the four pictures and Joe Clark and Christine Langford each appeared in one of the pictures on the first page of the newsletter.
- The second full-page of the newsletter in question included an article entitled "*Meet your Chehalis School District Board Members.*" Which described the volunteer status of the board, and its role to set school policy for the district. In addition, this page included a group photograph of the school board directors, and five equal sized-photos of the directors, including Mr. Gueck. Under the pictures were captions that detailed the board directors' district numbers, the year the member won election or was appointed, and each board member's employer information. This page does not state who is up for election in the November 2003 election. In all, Mr. Gueck appeared in five photos displayed in the newsletter.
- Debbie Gregory, assistant to Superintendent Kirsch and the district employee responsible for coordinating and preparing the newsletter, stated that she and Dr. Kirsch proofread the newsletter for grammatical errors prior to distribution, but stated that she and Dr. Kirsch have never reviewed the content of the newsletter for information that could be construed as election information. Dr. Kirsch stated that the intent of the newsletter is to inform the public of what's happening in the school district, and he has never reviewed the newsletter for how the public may perceive its content in connection with an upcoming election because the election "*... would be the farthest thing from our minds.*"
- Dr. Kirsch and Ms. Gregory both stated under oath that Dr. Kirsch did not direct her to include photos of the school board members, and said they were both unaware that Mr. Gueck appeared in five photos in the newsletter. Dr. Kirsch and

Ms. Gregory both testified that Mr. Gueck's election did not play any role in the number of times he appeared in the newsletter in question.

- Dr. Kirsch stated that the sole intent of the pictures on the first page was to illustrate his article reporting on school activities. Concerning the dedication of the second page of the newsletter to the school board directors, Ms. Gregory stated that her intent was to inform the public who the board members were. Dr. Kirsch confirmed Ms. Gregory's statement and stated the intent of the second page was *"to let the community now who these people are so that if they have questions or concerns regarding the school district, they ... know who to contact ..."* The newsletter did not mention that Mr. Gueck was a candidate, and the page dedicated to the school board directors gives equal space to each director. Several editions of past newsletters were reviewed. All contained pictures of Board members engaged in district activities. None contained a page dedicated to meeting the School Board Members.

You also alleged that the Chehalis School District timed the distribution of the fall 2003 newsletter to coincide with delivery of absentee ballots. As evidence, you state that you received the fall 2003 newsletter the same day that you received the mail-in ballot, which you believed was intended. You stated, *"a few years ago they (Chehalis School District) convinced our auditor to delay mailing the absentee ballots one week because the school district levy group didn't have their political materials ready to mail yet."*

We found:

- On October 14, 2003, the Chehalis School District distributed its fall edition of the school newsletter for 2003-2004, entitled "The Learning Network," to all postal patrons using the district's bulk mailing permit. The printer, Advocate Printing, received the order from the school district on September 29, 2003, and on October 10, 2003, it delivered 8,200 copies of the newsletters to the district.
- According to the staff at the Lewis County Auditor's office, the office distributes absentee ballots twenty days prior to the date of the election, on a Wednesday before 3:00 p.m. Given that the date of the general election in 2003 was November 4, 2003, the Lewis County Auditor mailed absentee ballots on October 15, 2003.
- Dr. Kirsch and Ms. Gregory stated that, generally, the timing of the distribution of the newsletter is dependent on multiple factors including the availability of Ms. Gregory's time, the proofreading process, the time constraints of the printer, and turnaround from the post office when using the bulk-mailing permit.
- Dr. Kirsch stated that Mr. Gueck's election in 2003 did not play any role in the date the newsletter was distributed and that the Chehalis School District has never timed distribution of its newsletter with absentee ballots. Dr. Kirsch and Ms. Gregory stated under oath that they are not personally aware of when absentee ballots are sent.
- Concerning your allegation that the Chehalis School District previously convinced the Lewis County Auditor's office to delay mailing absentee ballots, PDC staff researched whether any complaint was filed approximately three years ago naming

the auditor as respondent. On April 27, 1998, the PDC received a complaint from Alice Schoenenberger alleging that Gary E. Zandell, the Lewis County auditor, delayed sending out absentee ballots prior to the April 28, 1998 special election in an effort to promote local school district ballot propositions.

- The complaint was dismissed with the concurrence of the Chair. PDC staff found that while Mr. Zandell delayed mailing absentee ballots from April 8 to April 13, no evidence was found that his actions were for the purpose of promoting passage of the levy elections held by six school districts. The delay was to prevent ballots from being left unattended in mailboxes during spring break, and was an attempt to provide voters in Thurston and Lewis Counties, who reside in the same school district, approximately the same amount of time to review their ballots. The school districts that participated in the special election included Centralia, Toledo, Pe El, Winlock, Rochester and Onalaska. Chehalis School District was not involved in the complaint.

Dr. Kirsch approved the publication and distribution of a newsletter that appears to have assisted the election campaign of Dr. Gueck. The newsletter contained a full-page devoted to the school board directors, and four of the board members were candidates for election on the Fall 2003 ballot. Mr. Gueck was the only candidate facing a challenger in the election, and he was featured in five photographs. The photograph on the page entitled, "*Meet Your Chehalis School District Board Members*" included brief biographical information about each board member, including Mr. Gueck.

PDC staff believes there is evidence that Dr. Kirsch used the facilities of the Chehalis School District in a manner that assisted Mr. Gueck's campaign for school board in violation of RCW 42.17.130. However, because this action occurred during a time when no guidance was available from PDC staff, we will not be taking enforcement action in this instance. Dr. Kirsch will be cautioned that PDC staff believes his actions violated RCW 42.17.130, and that if he engages in similar actions in the future, enforcement action will likely be taken.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Public Disclosure Commission, I am dismissing your complaint against Dr. Greg Kirsch, Superintendent, Chehalis School District.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie  
Executive Director

c: Dr. Greg Kirsch, Superintendent, Chehalis School District